

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOHN HUSTON,)	Case No. SUSP-98-0038
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF LAW
)	AND ORDER OF THE BOARD
)	
v.)	
)	
WASHINGTON STATE UNIVERSITY,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Chelan Conference Room at the Wenatchee Holiday Inn in Wenatchee, Washington, on December 3, 1999. NATHAN S. FORD JR., Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant John Huston was present and was represented by Edward E. Younglove III, Attorney at Law, of Parr & Younglove, P.L.L.C. Respondent Washington State University was represented by Donna J. Stambaugh, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a one-day suspension for neglect of duty and willful violation of agency policy. Respondent alleged that Appellant (1) performed unauthorized work on an all-terrain vehicle; (2) performed work on a vehicle without obtaining the proper signature on the work order; and (3) ordered general workshop supplies without preparing the appropriate purchase order.

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2 1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB
3 No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim
4 v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB
5 No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

7 **II. FINDINGS OF FACT**

8 2.1 Appellant John Huston is a Maintenance Mechanic II and permanent employee for Respondent
9 Washington State University Tree Fruit Research and Extension Center in Wentachee, Washington.
10 Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated
11 thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on
12 September 24, 1998.

13
14 2.2 By letter dated August 14, 1998, James R. Carlson, Associate Dean for Agriculture Research,
15 informed Appellant of his one-day suspension without pay effective on August 26, 1998. Mr. Carlson
16 charged Appellant with neglect of duty and willful violation of published institutional policy and procedures.
17 The letter outlined three incidents of misconduct in which Appellant allegedly (1) made an unauthorized
18 adjustment on an all-terrain vehicle (ATV) which caused it to perform below expectations and made it
19 unavailable for use for a period of time; (2) performed work on a vehicle without obtaining the proper
20 signature and authorization on the work order; and (3) ordered workshop supplies without completing the
21 appropriate purchase order.

22
23 2.3 Appellant has been employed with WSU for approximately 12 years and was promoted to the
24 position of Maintenance Mechanic II in 1992. As a Maintenance Mechanic Appellant is responsible for
25 repair of farm equipment and vehicles, including routine maintenance such as oil changes. Appellant's
26 performance evaluations from November 1994 through March 1998 rate him as meeting or exceeding

1 performance expectations in all dimensions. However, Appellant's performance evaluation for the period
2 from April 1997 to March 1998 indicated that Appellant needed to improve his willingness to work within
3 the agency's established guidelines and procedures.

4
5 2.4 Dick Bishop, the Interim Plant Services Manager and Appellant's supervisor, implemented a number
6 of changes in the mechanic shop procedures for performing work. The changes were made in an attempt to
7 track expenses, to ensure that correct program budgets were charged, and to meet state auditing requirements.
8 On December 18, 1997, following a conversation with Appellant regarding the new procedures, Mr. Bishop
9 issued a memo to Appellant regarding the documentation of work performed in the mechanic shop. The
10 memo directed Appellant, in part, to obtain a work order from any individual requesting repair work to a
11 vehicle and farm equipment and to ensure that the work order was signed by a person authorized to make
12 such a request. The memo also directed Appellant to contact Mr. Bishop prior to purchasing any shop
13 supplies and tools.

14
15 2.5 On May 12, 1998, Appellant received a letter of reprimand for performing unauthorized work on a
16 state vehicle. The memo directed Appellant to strictly follow procedures for authorizing work and ordering
17 parts.

18
19 2.6 On May 15, 1998, Mr. Bishop updated his memo of December 18, 1997. The memo again directed
20 Appellant to obtain an authorized signature on work orders prior to purchasing any parts and/or prior to
21 making any repairs. Attached to the memo was a list of individuals who were authorized to sign work
22 orders.

23
24 *Incident #1*

25 2.7 On June 24, 1998, Appellant received a work order to perform an oil change and routine
26 maintenance on an ATV. Appellant had no prior experience with maintenance of an ATV so he contacted an

1 ATV dealer and obtained information and manuals on how to service the ATV. After he performed routine
2 maintenance on the ATV, Appellant conducted a road test to ensure that it was running properly. Appellant
3 concluded that the ATV was performing well and the ATV was returned to the research program.

4
5 2.8 On July 9, 1998, Mr. Bishop received a call from Peter Himmel, an employee of the research
6 program that used the ATV. Mr. Himmel stated that the ATV was not working properly and it did not have
7 enough speed to travel up hills. Mr. Himmel was concerned that the ATV had been altered to reduce its
8 speed without authorization from the research program. Following his conversation with Mr. Himmel, Mr.
9 Bishop contacted Appellant. Mr. Bishop ultimately concluded that Appellant had changed the ATV's
10 throttle settings to reduce the ATV's speed.

11
12 2.9 Appellant credibly testified that he performed a routine maintenance check on the ATV and he
13 denies that he deliberately made any modifications to the throttle. Respondent presented no evidence to
14 establish that Appellant modified the ATV's throttle settings.

15
16 *Incident #2*

17 2.10 On July 16, 1998, Appellant received a work order for repair to an orchard mower. Appellant
18 verified that the work order had the necessary information and proper signature authority. Appellant
19 determined that the orchard mower needed to be welded. However, the mechanic shop did not have a
20 number of the supplies needed to perform the work.

21
22 2.11 Appellant was authorized to purchase supplies and tools for use by the shop and to charge the items
23 to the shop's budget. Appellant understood that he was not authorized to charge supplies and tools used to
24 perform work on multiple shop jobs to the budgets of individual programs. In this case, the supplies needed
25 to repair the mower were general shop supplies that remained in the mechanic shop. Orders for general shop
26 supplies required approval from Appellant's supervisor and required a separate purchase order charging the

1 purchases to the shop's budget. Appellant obtained verbal approval from his supervisor to order the supplies,
2 however, he failed to complete a separate purchase order for the supplies. The general shop supplies were
3 charged under the work order for the orchard mower rather than to the shop.

4
5 *Incident #3*

6 2.12 On July 21, 1999, Greg Hannig, a student, completed and signed a work order for general repairs to a
7 vehicle. Mr. Hannig did not have signature authority to approve the work. Appellant admits that he
8 performed work on the car without verifying that Mr. Hannig had the authority to approve the work order
9 and without having obtained the proper signature as required by the mechanic shop's policy.

10
11 2.13 Dr. James R. Carlson was Appellant's appointing authority. Prior to determining what level of
12 discipline to impose on Appellant, Dr. Carlson met with Appellant to discuss the allegations and to provide
13 Appellant an opportunity to explain the circumstances surrounding the allegations. Dr. Carlson also
14 reviewed Appellant's history with the department and reviewed the memos addressing the proper use of
15 work and purchase orders as well as the reprimand Appellant received for performing unauthorized work on
16 a state vehicle. Dr. Carlson concluded that Appellant failed to follow policy when he performed work on the
17 ATV which was not requested nor authorized; when he ordered general shop supplies without completing a
18 purchase order; and when he failed to obtain the appropriate signature on a work order.

19
20 2.14 Dr. Carlson determined that Appellant clearly understood that the department was attempting to
21 improve its accountability of expenditures by ensuring that the necessary work and purchase orders were
22 completed and submitted, but that he failed to adhere to the new policy. Dr. Carlson concluded that
23 Appellant's actions were also a neglect of his duty. Dr. Carlson believed that Appellant was trying to do a
24 good job but felt that he needed to impress upon Appellant the importance of following the department's
25 policies and guidelines. Dr. Carlson concluded that a one-day suspension was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was advised of the proper procedure for ensuring that work orders were completed correctly and contained the proper signatures. Respondent asserts that in addition to speaking to Appellant about the changes in policy and procedures, Appellant's supervisor issued two memos confirming the changes. Respondent asserts that Appellant neglected his duty and violated policy when he changed the settings on the ATV, when he accepted and performed work on a vehicle without ensuring that the work order had the appropriate authorization, and when he ordered shop supplies without completing a separate purchase order. Respondent argues that Appellant exhibited a pattern of inappropriate behavior and argues that a one-day suspension without pay is the appropriate sanction.

3.2 Appellant argues that after Respondent changed the shop's policy and procedures it failed to give him adequate time to adjust to the new system. Appellant argues that there is no evidence that he intentionally reduced the speed of the ATV and no evidence of what, if any, alterations were made. Appellant argues that he ordered the shop supplies to perform work on the orchard mower after he received verbal approval from his supervisor to order them. Appellant contends that the events which resulted in this discipline are not related to the event which resulted in his letter of reprimand and that there is no pattern of misconduct on his part. Appellant argues that Respondent has not proven that he neglected his duty or that he willfully violated policy and asks the Board to reverse the one-day suspension without pay.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate

1 under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections,
2 PAB No. D82-084 (1983).

3
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer
5 and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health
6 Services, PAB No. D86-119 (1987).

7
8 4.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or
9 regulations is established by facts showing the existence and publication of the rules or regulations,
10 Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations.
11 Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

12
13 4.5 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary
14 actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction
15 which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

16
17 4.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts
18 and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be
19 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter
20 others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily
21 fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't
22 of Veterans Affairs, PAB No. D91-084 (1992).

23
24 4.7 Respondent has failed to prove that Appellant modified the throttle setting in the ATV. Respondent
25 has met its burden of proving that Appellant neglected his duty and willfully violated the department's policy
26 when he failed to ensure that the work order for general repairs to a vehicle had the proper signature and

1 when he failed to complete a separate purchase order for shop supplies. Appellant understood the shop's
2 new procedures, the importance of obtaining documentation of services performed and he had received both
3 verbal and written reminders on the proper method for ensuring that purchase orders and work orders
4 contained all necessary information. Respondent has met its burden of supporting two of the charges and
5 proving that a one-day suspension is appropriate under the facts and circumstances. Therefore, the
6 disciplinary sanction of a one-day suspension without pay should be affirmed.

7
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Huston is denied.

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11 DATED this _____ day of _____, 1999.

12
13 WASHINGTON STATE PERSONNEL APPEALS BOARD

14
15 _____
16 Walter T. Hubbard, Chair

17 _____
18 Gerald L. Morgen, Vice Chair